

109TH CONGRESS
2D SESSION

S. 2271

AN ACT

To clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA PATRIOT Act
5 Additional Reauthorizing Amendments Act of 2006”.

1 **SEC. 2. DEFINITION.**

2 As used in this Act, the term “applicable Act” means
3 the Act entitled “An Act to extend and modify authorities
4 needed to combat terrorism, and for other purposes.”
5 (109th Congress, 2d Session).

6 **SEC. 3. JUDICIAL REVIEW OF FISA ORDERS.**

7 Subsection (f) of section 501 of the Foreign Intel-
8 ligence Surveillance Act of 1978 (50 U.S.C. 1861), as
9 amended by the applicable Act, is amended to read as fol-
10 lows:

11 “(f)(1) In this subsection—

12 “(A) the term ‘production order’ means an
13 order to produce any tangible thing under this sec-
14 tion; and

15 “(B) the term ‘nondisclosure order’ means an
16 order imposed under subsection (d).

17 “(2)(A)(i) A person receiving a production order may
18 challenge the legality of that order by filing a petition with
19 the pool established by section 103(e)(1). Not less than
20 1 year after the date of the issuance of the production
21 order, the recipient of a production order may challenge
22 the nondisclosure order imposed in connection with such
23 production order by filing a petition to modify or set aside
24 such nondisclosure order, consistent with the requirements
25 of subparagraph (C), with the pool established by section
26 103(e)(1).

1 “(ii) The presiding judge shall immediately assign a
2 petition under clause (i) to 1 of the judges serving in the
3 pool established by section 103(e)(1). Not later than 72
4 hours after the assignment of such petition, the assigned
5 judge shall conduct an initial review of the petition. If the
6 assigned judge determines that the petition is frivolous,
7 the assigned judge shall immediately deny the petition and
8 affirm the production order or nondisclosure order. If the
9 assigned judge determines the petition is not frivolous, the
10 assigned judge shall promptly consider the petition in ac-
11 cordance with the procedures established under section
12 103(e)(2).

13 “(iii) The assigned judge shall promptly provide a
14 written statement for the record of the reasons for any
15 determination under this subsection. Upon the request of
16 the Government, any order setting aside a nondisclosure
17 order shall be stayed pending review pursuant to para-
18 graph (3).

19 “(B) A judge considering a petition to modify or set
20 aside a production order may grant such petition only if
21 the judge finds that such order does not meet the require-
22 ments of this section or is otherwise unlawful. If the judge
23 does not modify or set aside the production order, the
24 judge shall immediately affirm such order, and order the
25 recipient to comply therewith.

1 “(C)(i) A judge considering a petition to modify or
2 set aside a nondisclosure order may grant such petition
3 only if the judge finds that there is no reason to believe
4 that disclosure may endanger the national security of the
5 United States, interfere with a criminal, counterterrorism,
6 or counterintelligence investigation, interfere with diplo-
7 matic relations, or endanger the life or physical safety of
8 any person.

9 “(ii) If, upon filing of such a petition, the Attorney
10 General, Deputy Attorney General, an Assistant Attorney
11 General, or the Director of the Federal Bureau of Inves-
12 tigation certifies that disclosure may endanger the na-
13 tional security of the United States or interfere with diplo-
14 matic relations, such certification shall be treated as con-
15 clusive, unless the judge finds that the certification was
16 made in bad faith.

17 “(iii) If the judge denies a petition to modify or set
18 aside a nondisclosure order, the recipient of such order
19 shall be precluded for a period of 1 year from filing an-
20 other such petition with respect to such nondisclosure
21 order.

22 “(D) Any production or nondisclosure order not ex-
23 plicitly modified or set aside consistent with this sub-
24 section shall remain in full effect.

1 “(3) A petition for review of a decision under para-
2 graph (2) to affirm, modify, or set aside an order by the
3 Government or any person receiving such order shall be
4 made to the court of review established under section
5 103(b), which shall have jurisdiction to consider such peti-
6 tions. The court of review shall provide for the record a
7 written statement of the reasons for its decision and, on
8 petition by the Government or any person receiving such
9 order for writ of certiorari, the record shall be transmitted
10 under seal to the Supreme Court of the United States,
11 which shall have jurisdiction to review such decision.

12 “(4) Judicial proceedings under this subsection shall
13 be concluded as expeditiously as possible. The record of
14 proceedings, including petitions filed, orders granted, and
15 statements of reasons for decision, shall be maintained
16 under security measures established by the Chief Justice
17 of the United States, in consultation with the Attorney
18 General and the Director of National Intelligence.

19 “(5) All petitions under this subsection shall be filed
20 under seal. In any proceedings under this subsection, the
21 court shall, upon request of the Government, review ex
22 parte and in camera any Government submission, or por-
23 tions thereof, which may include classified information.”.

1 **SEC. 4. DISCLOSURES.**

2 (a) FISA.—Subparagraph (C) of section 501(d)(2)
 3 of the Foreign Intelligence Surveillance Act of 1978 (50
 4 U.S.C. 1861(d)(2)), as amended by the applicable Act, is
 5 amended to read as follows:

6 “(C) At the request of the Director of the Federal
 7 Bureau of Investigation or the designee of the Director,
 8 any person making or intending to make a disclosure
 9 under subparagraph (A) or (C) of paragraph (1) shall
 10 identify to the Director or such designee the person to
 11 whom such disclosure will be made or to whom such dislo-
 12 sure was made prior to the request.”.

13 (b) TITLE 18.—Paragraph (4) of section 2709(c) of
 14 title 18, United States Code, as amended by the applicable
 15 Act, is amended to read as follows:

16 “(4) At the request of the Director of the Fed-
 17 eral Bureau of Investigation or the designee of the
 18 Director, any person making or intending to make
 19 a disclosure under this section shall identify to the
 20 Director or such designee the person to whom such
 21 disclosure will be made or to whom such disclosure
 22 was made prior to the request, except that nothing
 23 in this section shall require a person to inform the
 24 Director or such designee of the identity of an attor-
 25 ney to whom disclosure was made or will be made

1 to obtain legal advice or legal assistance with respect
2 to the request under subsection (a).”.

3 (c) FAIR CREDIT REPORTING ACT.—

4 (1) IN GENERAL.—Paragraph (4) of section
5 626(d) of the Fair Credit Reporting Act (15 U.S.C.
6 1681u(d)), as amended by the applicable Act, is
7 amended to read as follows:

8 “(4) At the request of the Director of the Fed-
9 eral Bureau of Investigation or the designee of the
10 Director, any person making or intending to make
11 a disclosure under this section shall identify to the
12 Director or such designee the person to whom such
13 disclosure will be made or to whom such disclosure
14 was made prior to the request, except that nothing
15 in this section shall require a person to inform the
16 Director or such designee of the identity of an attor-
17 ney to whom disclosure was made or will be made
18 to obtain legal advice or legal assistance with respect
19 to the request for the identity of financial institu-
20 tions or a consumer report respecting any consumer
21 under this section.”.

22 (2) OTHER AGENCIES.—Paragraph (4) of sec-
23 tion 627(c) of the Fair Credit Reporting Act (15
24 U.S.C. 1681v(c)), as amended by the applicable Act,
25 is amended to read as follows:

1 “(4) At the request of the authorized govern-
 2 ment agency, any person making or intending to
 3 make a disclosure under this section shall identify to
 4 the requesting official of the authorized government
 5 agency the person to whom such disclosure will be
 6 made or to whom such disclosure was made prior to
 7 the request, except that nothing in this section shall
 8 require a person to inform the requesting official of
 9 the identity of an attorney to whom disclosure was
 10 made or will be made to obtain legal advice or legal
 11 assistance with respect to the request for informa-
 12 tion under subsection (a).”.

13 (d) RIGHT TO FINANCIAL PRIVACY ACT.—

14 (1) IN GENERAL.—Subparagraph (D) of section
 15 1114(a)(3) of the Right to Financial Privacy Act
 16 (12 U.S.C. 3414(a)(3)), as amended by the applica-
 17 ble Act, is amended to read as follows:

18 “(D) At the request of the authorized Govern-
 19 ment authority or the Secret Service, any person
 20 making or intending to make a disclosure under this
 21 section shall identify to the requesting official of the
 22 authorized Government authority or the Secret Serv-
 23 ice the person to whom such disclosure will be made
 24 or to whom such disclosure was made prior to the
 25 request, except that nothing in this section shall re-

1 quire a person to inform the requesting official of
 2 the authorized Government authority or the Secret
 3 Service of the identity of an attorney to whom dis-
 4 closure was made or will be made to obtain legal ad-
 5 vice or legal assistance with respect to the request
 6 for financial records under this subsection.”.

7 (2) FEDERAL BUREAU OF INVESTIGATION.—

8 Clause (iv) of section 1114(a)(5)(D) of the Right to
 9 Financial Privacy Act (12 U.S.C. 3414(a)(5)(D)), as
 10 amended by the applicable Act, is amended to read
 11 as follows:

12 “(iv) At the request of the Director of
 13 the Federal Bureau of Investigation or the
 14 designee of the Director, any person mak-
 15 ing or intending to make a disclosure
 16 under this section shall identify to the Di-
 17 rector or such designee the person to
 18 whom such disclosure will be made or to
 19 whom such disclosure was made prior to
 20 the request, except that nothing in this
 21 section shall require a person to inform the
 22 Director or such designee of the identity of
 23 an attorney to whom disclosure was made
 24 or will be made to obtain legal advice or
 25 legal assistance with respect to the request

1 for financial records under subparagraph
2 (A).”.

3 (e) NATIONAL SECURITY ACT OF 1947.—Paragraph
4 (4) of section 802(b) of the National Security Act of 1947
5 (50 U.S.C. 436(b)), as amended by the applicable Act, is
6 amended to read as follows:

7 “(4) At the request of the authorized investiga-
8 tive agency, any person making or intending to
9 make a disclosure under this section shall identify to
10 the requesting official of the authorized investigative
11 agency the person to whom such disclosure will be
12 made or to whom such disclosure was made prior to
13 the request, except that nothing in this section shall
14 require a person to inform the requesting official of
15 the identity of an attorney to whom disclosure was
16 made or will be made to obtain legal advice or legal
17 assistance with respect to the request under sub-
18 section (a).”.

19 **SEC. 5. PRIVACY PROTECTIONS FOR LIBRARY PATRONS.**

20 Section 2709 of title 18, United States Code, as
21 amended by the applicable Act, is amended by adding at
22 the end the following:

23 “(f) LIBRARIES.—A library (as that term is defined
24 in section 213(1) of the Library Services and Technology
25 Act (20 U.S.C. 9122(1)), the services of which include ac-

1 cess to the Internet, books, journals, magazines, news-
2 papers, or other similar forms of communication in print
3 or digitally by patrons for their use, review, examination,
4 or circulation, is not a wire or electronic communication
5 service provider for purposes of this section, unless the
6 library is providing the services defined in section
7 2510(15) ('electronic communication service') of this
8 title.”.

9 This Act shall become effective immediately upon en-
10 actment.

Passed the Senate March 1, 2006.

Attest:

Secretary.

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To clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.